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Cases, Regulations, and Statutes

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CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr

BANKRUPTCY

GENERAL

DISCHARGE. The debtor operated a farm equipment business and agreed to sell a tractor on consignment for a creditor. The tractor was sold but the debtor failed to pay the proceeds, less the commission, to the creditor. The creditor had repeatedly asked about the sale of the tractor and was told the tractor had not sold, even after the sale of the tractor. The debtor filed for Chapter 7 and the creditor filed a claim for a money judgment obtained for the sale proceeds. The creditor filed a motion to have the claim declared nondischargeable under Section 523(a)(4) for fraud or defalcation while acting as a fiduciary capacity, embezzlement or larceny. The court held that the consignment of the tractor did not create a fiduciary relationship and no embezzlement or larceny occurred because the debtor's initial taking of the tractor was not unlawful. However, the court held that the claim was nondischargeable under Section 523(a)(2)(A) because the debtor made knowingly false statements after the sale on which the creditor relied to its detriment. ***In re*** **Beetler, 2007 Bankr. LEXIS 1511 (Bankr. C.D. Ill. 2007)**.

ELIGIBILITY. The debtor had filed a previous Chapter 12 case in which a creditor received relief from the automatic stay as to property owned by the debtor. The creditor then started to advertise the sale of the property for a foreclosure sale. The debtor dismissed the Chapter 12 case and filed for Chapter 13 before the foreclosure sale. The creditor sought relief from the automatic stay in the Chapter 13 case in order to proceed with the foreclosure sale. The court held that, under Section 109(g)(2) an individual or family farmer may not file a bankruptcy case if a previous case was filed, a request to relief from the automatic stay was made in the previous case, and the debtor voluntarily dismissed the case after the request was made. The court held that, because the debtor was not eligible to file the Chapter 13 case under Section 109(g)(2), the creditor was entitled to relief from the automatic stay in order to proceed with the foreclosure sale allowed in the first bankruptcy case. ***In re*** **Parten, 2007 Bankr. LEXIS 921 (Bankr. M.D. Ga. 2007)**.

CHAPTER 12

DISCHARGE. The debtors, husband and wife, obtained six loans from a creditor and supplied four financial statements in obtaining those loans. The debtors voluntarily filed for Chapter 12 and the creditor sought a summary judgment on the issue of whether the outstanding loan amounts were nondischargeable under Section 523(a)(2)(B) for the filing of false financial statements by the debtors in obtaining the loans. The court held that summary judgment was improper because significant material facts needed to be determined before a final determination on dischargeability could be made. ***In re*** **Phillips, 2007 Bankr. LEXIS 1422 (Bankr. C.D. Ill. 2007); *In re* Phillips, 2007 Bankr. LEXIS 1452 (Bankr. C.D. Ill. 2007)**.

CONTRACTS

HOG LEDGER CONTRACTS. The plaintiff pork processor entered into contracts with the defendants to buy hogs produced by the defendants. The contracts had provisions for determining the purchase price of hogs under the contracts based on USDA daily market news service base price and market price for live weight report for hogs. The plaintiff changed the method for calculating the purchase price because the USDA changed its method of reporting prices. When the contract terminated under their terms, the defendants had debit accounts with the plaintiff which sought repayment. The defendants refused to make the payments and the plaintiff sued for breach of contract. The defendants argued that the change in method of calculating the purchase price of hogs was an improper modification of the contracts. The court granted summary judgment on this issue to the plaintiff because there was no evidence that the pricing modification was not reasonable, given the change in the USDA reporting method. The defendants also argued that the contracts were void because they did not have a mediation provision, as required by Minn. Stat. § 17.91. The court acknowledged that a mediation provision was required but held that the failure to have such a clause did not void the whole contract. **Swift & Co. v. Elias Farms, 2007 U.S. Dist. LEXIS 34225 (D. Minn. 2007)**.

OPTION. The plaintiff experienced financial hardship and offered to sell 80 acres to the defendant if the defendant would grant the plaintiff an option to repurchase the land at the same price. The transfer was made, with the option providing that it had to be made by a date certain and could be exercised by either a hand-delivered notice or notice delivered by standard U.S. mail. Just before the option was due to expire, the defendant went on vacation until a day after the expiration of the option. The plaintiff claimed to have visited the defendant's farm just before the option expired but no one was home. The plaintiff argued that the defendant's absence prevented the timely exercise of the option; therefore, the late exercise of the option should be enforced. The court noted that the option was not required to be exercised only by hand-delivered notice but could also have been exercised by postal mail. The court held that the option expired because the plaintiff failed to timely give notice of the intent to exercise the option. **Gehret v. Rismiller, 2007 Ohio App. LEXIS 1753 (Ohio Ct. App. 2007)**.

FEDERAL AGRICULTURAL PROGRAMS

FARM LABOR. The National Agricultural Statistics Service has issued farm employment figures as of May 18, 2007. There were 961,000 hired workers on the nation's farms and ranches the week of April 8-14, 2007, unchanged from a year ago. Of these hired workers, 720,000 workers were hired directly by farm operators. Agricultural service employees on farms and ranches made up the remaining 241,000 workers. Farm operators paid their hired workers an average wage of $10.17 per hour during the April 2007 reference week, up 39 cents from a year earlier. Field workers received an average of $9.35 per hour, up 40 cents from April 2006, while livestock workers earned $9.55 per hour compared with $9.31 a year earlier. The field and livestock worker combined wage rate, at $9.41 per hour, was up 35 cents from last year. The number of hours worked averaged 40.6 hours for hired workers during the survey week, down fractionally from a year ago. All NASS reports are available free of charge on the internet. For access, go to the NASS Home Page at: http:/www.usda.gov/nass/. **Sp Sy 8 (5-07).**

ORGANIC FOODS. The AMS has issued proposed regulations which amend the Department of Agriculture's National List of Allowed and Prohibited Substances regulations to enact recommendations submitted to the Secretary of Agriculture by the National Organic Standards Board (NOSB) during public meetings held May 6-8, 2002, in Austin, Texas, and March 27-29, 2007, in Washington, DC. Consistent with the NOSB recommendations, the proposed regulations add 38 substances, along with any restrictive annotations, to the National List regulations. **72 Fed. Reg. 27252 (May 15, 2007)**.

FEDERAL ESTATE AND GIFT TAXATION

NO ITEMS

FEDERAL INCOME TAXATION

BAD DEBT. The taxpayer corporation had transferred funds to a limited liability company owned by the corporation's officers. The corporation claimed a bad deduction for the transferred funds when the LLC failed. The court held that no debt existed because the transfer was not formalized with a promissory note, no maturity date was fixed, no interest was charged, no collateral was given and no repayments were demanded or made. In addition, the court held that the amounts transferred were transferred by the officers as individuals, even though the funds came from the corporation's accounts; therefore, even if a debt existed, the corporation was not the lender. Under a similar reason, the Tax Court held that the corporation could not claim a loss deduction for the transferred funds because the corporation did not receive an equity interest in the LLC,inasmuch as the officers received the interests in the LLC. This ruling was vacated and remanded for additional evidence to determine whether the taxpayer was at risk as to the debt. **Hubert Enterprises, Inc. v. Comm'r, 2007-1 U.S. Tax Cas. (CCH) ¶ 50,494 (6th Cir. 2007)** ***aff'g in part and vac'g and rem'g in part*****, 125 T.C. 73 (2005)**.

BUSINESS EXPENSES. The taxpayer operated a construction business as a part time activity. The taxpayer claimed expenses for business use of vehicles, depreciation and the purchase of power tools. The taxpayer failed to file a Schedule C with the original tax return and filed a substitute Schedule C based on estimated expenses. The taxpayer did not provide vehicle use records to substantiate mileage, business purpose or actual costs incurred from the business use of the vehicles. The court acknowledged that the vehicles were used in the business but held that the lack of substantiation prevented any determination as to the amount of the allowed deductions; therefore, the deductions were properly disallowed by the IRS. The court also disallowed any depreciation deduction for the vehicles for the same reason. The taxpayer had claimed that the depreciation claimed was the same as for the previous year but failed to produce into evidence a copy of the previous year's return. The court also held that the cost of the purchase of the new power tools had to be depreciated, although an I.R.C. § 179 expense method depreciation deduction was available. However, because the taxpayer's business did not have any net income in the tax year involved and the taxpayer did not make a Section 179 election, the taxpayer could not claim a Section 179 deduction, either. **Goode v. Comm'r, T.C. Summary Op. 2007-73**.

The taxpayer was a California nonprofit corporation which operated a community center for members with debilitating diseases. The taxpayer was not tax-exempt under the federal tax rules but operated on a break-even basis. As part of the care-giving operation, the taxpayer had a program for providing marijuana to members who had a doctor's letter recommending marijuana use as medical treatment. Under I.R.C. § 280E no income tax deductions or credits are allowed "for any amount paid or incurred during the taxable year in carrying on any trade or business if such trade or business (or the activities which comprise such trade or business) consists of trafficking in controlled substances (within the meaning of schedule I and II of the Controlled Substances Act) which is prohibited by Federal law or the law of any State in which such trade or business is conducted." The IRS argued that the taxpayer had only one trade or business and that the marijuana distribution was an integral part of the care-giving operations of the taxpayer; therefore, all deductions and credits associated with the taxpayer's operations were disallowed by Section 280E. The court held that the marijuana distribution program was a separate trade or business and that only the deductions and credits resulting from that activity were disallowed. **Californians Helping to Alleviate Medical Problems, Inc. v. Comm'r, 128 T.C. No. 14 (2007)**.

CHARITIES. The IRS has issued interim guidance on I.R.C. § 6104(d)(1)(A)(ii) which was added by section 1225 of the Pension Protection Act of 2006, *Pub. L. No. 109-280, 120*

Stat. 780 (2006). This provision imposes a new requirement on all organizations exempt from federal income tax under I.R.C. § 501(a) and described in I.R.C. § 501(c)(3) (charities) to make available for public inspection a copy of any annual return filed under section 6011 relating to the tax imposed under section 511. The annual return subject to this public disclosure requirement (unrelated business income) is filed on Form 990-T, *Exempt Organization Business Income Tax Return*. The requirement applies to any Form 990-T filed by a charity with the IRS after August 17, 2006. The IRS and the Treasury Department expect to revise the regulations under I.R.C. § 6104(d) to take account of the change to the statute. Until those revised regulations are effective, charities may rely on this notice to comply with I.R.C. § 6104(d)(1)(A)(ii). **Notice 2007-45, I.R.B. 2007-22**.

CORPORATIONS.

PERSONAL SERVICE CORPORATIONS. The taxpayer was a professional medical corporation formed by a medical doctor to own and operate the doctor's radiation oncology treatment facility. The taxpayer also employed eight to nine staff employees as well as nurses, administrators and additional oncologists. The taxpayer filed Form 1120 and declared taxes under the graduated income tax rates for corporations under I.R.C. § 11(b)(1). The IRS assessed a deficiency based on taxation of the corporation as a qualified personal service corporation subject to the 35 percent tax rate under I.R.C. § 11(b)(2). The taxpayer argued that the taxpayer did not meet the function test of a personal service corporation in that it operated a facility and not a health care service. The court held that the radiation oncology services provided, supported and administered by the taxpayer's employees were health care services; therefore, the taxpayer met the function test by providing health care services. Because the taxpayer was wholly-owned by a medical doctor, the taxpayer also met the ownership test and was held to be properly taxed as a qualified personal service corporation at a 35 percent tax rate. **Eure v. Comm'r, T.C. Memo. 2007-124**.

COURT AWARDS AND SETTLEMENTS. The taxpayer's employment with a bank was terminated after the taxpayer reported illegal actions by the bank. As a result of the termination, the taxpayer lost the taxpayer's FHA underwriting license. The taxpayer filed a variety of lawsuits against the bank and public officials for violation of civil rights. The parties settled for a fixed sum of money and the taxpayer paid attorney's fees out of the settlement proceeds. The taxpayer claimed that the loss of the FHA underwriting license was a personal injury allowing the settlement proceeds to be excluded from taxable income. The court held that the license was a property right and the settlement proceeds were included in taxable income, with no reduction for the amount paid as attorney's fees. **Allum v. Comm'r, 2007-1 U.S. Tax Cas. (CCH) ¶ 50,489 (9th Cir. 2007), *aff'g*, T.C. Memo. 2005-177**.

DISASTER LOSSES. On April 26, 2007, the president determined that certain areas in New Jersey are eligible for assistance from the government under the Disaster Relief and Emergency Assistance Act (42 U.S.C. § 5121) as a result of severe storms and flooding, which began on April 14, 2007. **FEMA-1694-DR**. On April 27, 2007, the president determined that certain areas in New Hampshire are eligible for assistance from the government under the Act as a result of severe storms and flooding, which began on April 15, 2007. **FEMA-1695-DR.** On May 1, 2007, the president determined that certain areas in West Virginia are eligible for assistance from the government under the Act as a result of severe storms and flooding, which began on April 14, 2007. **FEMA-1696-DR**. On May 1, 2007, the president determined that certain areas in Texas are eligible for assistance from the government under the Act as a result of severe storms and tornadoes, which began on April 21, 2007. **FEMA-1697-DR**. On May 4, 2007, the president determined that certain areas in Vermont are eligible for assistance from the government under the Act as a result of severe storms and flooding, which began on April 15, 2007. **FEMA-1698-DR**. On May 6, 2007, the president determined that certain areas in Kansas are eligible for assistance from the government under the Act as a result of severe storms, tornadoes and flooding, which began on May 4, 2007. **FEMA-1699-DR**. Taxpayers who sustained losses attributable to these disasters may deduct the losses on their 2006 returns.

DOMESTIC PRODUCTION DEDUCTION. The IRS has issued guidance that describes the conditions under which certain partnerships and S corporations may elect to calculate qualified production activities income (QPAI) and W-2 wages (as defined under Temp. Reg. § 1.199-2T(e)(2)) at the entity level for purposes of the I.R.C. § 199 domestic production activities deduction. Also described is the manner for allocating and reporting QPAI and W-2 wages to partners or shareholders. The procedure is effective for tax years beginning on or after May 11, 2007, but it may be applied by taxpayers to tax years beginning after May 17, 2006. **Rev. Proc. 2007-34, I.R.B. 2007-23**.

The IRS has issued a revenue procedure providing guidance for determining when statistical sampling may be used for purposes of I.R.C. § 199 and establishing acceptable statistical sampling methodologies. For purposes of Section 199, the use of statistical sampling will be considered a reasonable method that is satisfactory to the IRS to the extent the sampling methodology used meets the requirements of this revenue procedure and follows the procedures provided in Appendix A (Sampling Plan Standards), Appendix B (Sampling Documentation Standards), and Appendix C (Technical Formulas). For example, pursuant to this revenue procedure, statistical sampling may be used to: (1) allocate gross receipts between domestic pproduction gross receipts (DPGR) and non-DPGR under Treas. Reg. § 1.199-1(d)(1); (2) determine whether gross receipts qualify as DPGR on an item-by-item basis under Treas. Reg. § 1.199-3(d)(1); (3) allocate CGS between DPGR and non-DPGR under Treas. Reg. § 1.199-4(b)(2)(i); and (4) allocate deductions that are properly allocable to DPGR or gross income attributable to DPGR under Treas. Reg. § 1.199-4(c)(1). The ruling provides that the appropriateness of using a statistical sample for purposes of Section 199 is a facts and circumstances determination. Factors used in determining whether a statistical sample is appropriate include, but are not limited to, the time required to analyze large volumes of data, the cost of analyzing data, the existence of verifiable information relevant to the taxpayer's Section 199 calculation, and the availability of more accurate information.

For purposes of Section 199, statistical sampling will generally be considered appropriate if the taxpayer can demonstrate a compelling reason for its use. **Rev. Proc. 2007-35, I.R.B. 2007-23**.

HEALTH SAVINGS ACCOUNTS. For tax years beginning after December 31, 2006, the maximum annual HSA is the indexed statutory amount, without reference to the deductible of the high deductible health plan. For calendar year 2007, the limitation on deductions under I.R.C. § 223(b)(2)(A) for an individual with self-only coverage under a high deductible health plan is $2,850 ($2,900 for calendar year 2008). For calendar year 2007, the limitation on deductions under I.R.C. § 223(b)(2)(B) for an individual with family coverage under a high deductible health plan is $5,650 ($5,800 for calendar year 2008). **Rev. Proc. 2007-36, I.R.B. 2007-22**.

HEAVY-DUTY HYBRID VEHICLE TAX CREDIT. The IRS has issued interim guidance, pending the issuance of regulations, relating to the new qualified hybrid motor vehicle credit under I.R.C. § 30B(a)(3) and (d). The notice provides procedures for a vehicle manufacturer (or, in the case of a foreign vehicle manufacturer, its domestic distributor) to certify to the Internal Revenue Service both: (1) that a heavy-duty vehicle of a particular make, model, and model year meets certain requirements that must be satisfied to claim the new qualified hybrid motor vehicle credit under I.R.C. §30B(a)(3) and (d); and (2) the amount of the credit allowable with respect to that vehicle. This notice also provides guidance to taxpayers who purchase qualified vehicles regarding the conditions under which they may rely on the vehicle manufacturer's (or, in the case of a foreign vehicle manufacturer, its domestic distributor's) certification in determining whether a credit is allowable with respect to the vehicle and the amount of the credit. The IRS and the Treasury Department expect that the regulations will incorporate the rules set forth in this notice. **Notice 2007-46, I.R.B. 2007-23**.

IRA. The taxpayer got into an argument with a representative of a financial institution which managed the taxpayer's IRA and demanded that all funds be withdrawn immediately and issued in a check. The taxpayer deposited the funds in another checking account. The taxpayer suffered from a mental and medical impairment which prevented understanding that the funds needed to be rolled over into another IRA in order to avoid tax and penalties. The taxpayer provided medical documentation of the taxpayer's condition. The IRS granted the taxpayer a waiver of the 60-day rollover period. **Ltr. Rul. 200718037, Feb. 5, 2007**.

The taxpayers, husband and wife, received interest income from three regular bank accounts. The wife also received a distribution from a Keogh account. The taxpayers used all the funds to purchase U.S. Savings Bonds and did not include the amounts in taxable income on their federal income tax return. The court held that there was no exception to tax on interest income or Keogh distributions where the funds were used to purchase U.S. Savings Bonds; therefore, the amounts were included in taxable income. **Birkey v. Comm'r, T.C. Summary Op. 2007-72**.

LIKE-KIND EXCHANGES. The taxpayer owned real property which was to be sold to a buyer through a qualified exchange accommodation agreement (QEAA). The taxpayer assigned to a qualified intermediary the right to sell the property. The taxpayer assigned to an exchange accommodation titleholder (EAT) the right to purchase exchange real property and the EAT acquired the exchange property. On the 46th day, the taxpayer sent the EAT a document identifying the original property as the property to be exchanged for the property acquired by the EAT. The IRS ruled that, because the EAT was treated as the beneficial owner of the exchange property under *Rev. Proc. 2000-37, 2002-2 C.B. 208*, the exchange satisfied the 45 day identification requirement. **Ltr. Rul. 200718028, Feb. 5, 2007**.

NONCONVENTIONAL FUEL SOURCE CREDIT. The IRS has published the nonconventional source fuel credit, inflation adjustment factor and reference price to be used in determining the tax credit allowable on the sale of fuel from nonconventional sources under I.R.C. § 45K for calendar year 2006. The reference price for calendar year 2006 is $59.68. In the case of gas produced from biomass and liquid, gaseous or solid synthetic fuel produced from coal, the inflation adjustment factor is 2.3429 and the nonconventional source fuel credit prior to phaseout is $4.72 barrel-of-oil equivalent of qualified fuels. In the case of facilities producing coke or coke gas, the inflation adjustment factor for calendar year 2006 is 1.0605 and the nonconventional source fuel credit is $3.18 per barrel-of-oil equivalent. Because the reference price exceeds $23.50 multiplied by the inflation adjustment factor, the credit per barrel equivalent of qualified fuel sold in calendar year 2006 is reduced by $2.31. **Notice of Inflation Adjustment Factor, 2007 FED ¶ 46,460 (CCH)**.

SAFE HARBOR INTEREST RATES
June 2007

	Annual	Semi-annual	Quarterly	Monthly
		Short-term		
AFR	4.84	4.78	4.75	4.73
110 percent AFR	5.33	5.26	5.23	5.20
120 percent AFR	5.82	5.74	5.70	5.67
		Mid-term		
AFR	4.64	4.59	4.56	4.55
110 percent AFR	5.11	5.05	5.02	5.00
120 percent AFR	5.59	5.51	5.47	5.45
		Long-term		
AFR	4.91	4.85	4.82	4.80
110 percent AFR	5.41	5.34	5.30	5.28
120 percent AFR	5.90	5.82	5.78	5.75

Rev. Rul. 2007-36, I.R.B. 2007-__.

TAX-ADVANTAGED ACCOUNTS. The IRS has updated its list of entities that have been approved to serve as nonbank trustees and custodians for several types of tax-advantaged savings accounts including: (1) Archer medical savings accounts established under I.R.C. § 220; (2) health savings accounts described in I.R.C. § 223; (3) custodial accounts of retirement plans qualified under I.R.C. § 401; (4) custodial accounts for stock in a regulated investment company, as described in I.R.C. § 403(b)(7); (5) trust or custodial accounts of traditional individual retirement accounts under I.R.C. § 408 and Roth IRAs under I.R.C. § 408A; (6) Custodial accounts of eligible deferred compensation plans of state and local governments and exempt organizations, as described in I.R.C. § 457(b); and (7) Coverdell education savings accounts described in I.R.C. § 530. **Ann. 2007-47, I.R.B. 2007-20**.

TAX PROTESTERS. The taxpayers, husband and wife, filed tax returns without reporting any income from their employment wages. The IRS rejected the returns and made assessments based on W-2 forms The taxpayers made only tax-protester related arguments against the IRS assessments and the court held that the IRS assessments and disallowance of unsubstantiated deductions were proper. The court did not impose a penalty for frivolous or groundless arguments but warned the taxpayers that such penalties would be imposed if they continued to make such arguments to the court. **Jackson v. Comm'r, T.C. Memo. 2007-116**.

TELEPHONE EXCISE TAX REFUND. The IRS has issued a reminder that the telephone excise tax refund is available to nonprofit organizations, whether or not they are required to file a return on May 15, 2007 for their 2006 tax years. The IRS has also issued instructions for claiming the refund. **IR-2007-99**.

INSURANCE

DUTY TO DEFEND. The plaintiff had purchased from the defendant insurance company a liability policy for its animal confinement facility. The plaintiff was sued by a neighbor for negligence, nuisance and trespass from the odors from the manure lagoon on the plaintiff's property. The plaintiff requested that the defendant defend against the suit but the defendant refused. The plaintiff successfully defended the suit and filed suit against the defendant to recover the legal costs of the defense. The defendant argued that the policy provided coverage only for accident "occurrences" and the plaintiff had intentionally located the manure lagoon near a neighbor's residence. The policy defined an "occurrence" as "an accident which is neither expected nor intended including continuous or repeated exposure to substantially similar conditions." The plaintiff argued that, because an occurrence included actions which were unintentional, the policy covered the nuisance lawsuit. The court held that the nuisance lawsuit was an occurrence covered by the policy. The defendant also argued that the lawsuit was excluded from coverage under the pollution clause of the insurance policy, which excluded coverage for acts of pollution by the plaintiff. The court agreed, noting that the original lawsuit alleged damages from noxious and offensive odors from gases emitted by the lagoon. **Wakefield Pork, Inc. v. RAM Mutual Insurance Co., 2007 Minn. App. LEXIS 60 (Minn. Ct. App. 2007)**.

TRESPASS

DAMAGES. The parties owned properties which at one time had a common owner. When the original property was split, the defendant's deed granted an easement for a farm lane over part of the other two parcels and the deeds of the other two parcels merely recognized that easement. The plaintiff wanted to use the lane to access the same public road and argued that the recognition of the defendant's easement also created an easement for the plaintiff over the defendant's portion of the farm lane. The court held that no easement was created by the mere recognition of the easement granted to the defendant. The trial court had awarded $5 "nominal" damages for each day that the plaintiff had used the farm lane, resulting in a total award of over $8,000. The plaintiff appealed this award as violating the principles of a "nominal" award. The appellate court agreed and remanded the case for a determination as to whether the $8,000 award was justified as compensatory. If the award was not justified as compensatory, the award had to be reduced to a much smaller amount to fit the "nominal" status. **Brown v. Smith, 2007 Md. App. LEXIS 44 (Md. Ct. App. 2007)**.

ZONING

SPOT ZONING. The plaintiff had objected to a property owner's request to rezone 15 acres of rural land from Agricultural II to Recreational/Residential in order to build and operate a campground on the land. The county zoning boards held three public hearings on the rezoning request and approved the zoning change as (1) a good use of the land, (2) beneficial to the recreation in the area, (3) as beneficial to economic development, (4) and hidden from affecting other land owners. The plaintiff argued that the rezoning was spot zoning which benefitted only the property owner. The court held that spot zoning was not illegal so long as it was a benefit to persons other than the property owner. The appellate court held that the zoning boards had made findings that the community would benefit from the rezoning; therefore, the spot zoning was not improper. The plaintiff also argued that the zoning boards had to make specific findings and rulings on the eight factors of a county ordinance governing rezoning decisions. The court held that the ordinance provided only areas of consideration and not spcific requirements for making rezoning decisions. **Whitbeck v. Barron County Board of Supervisors, 2007 Wisc. App. LEXIS 424 (Wis. Ct. App. 2007)**.

IN THE NEWS

STATE INHERITANCE TAX. Nebraska Govenor Heineman signed into law L.B. 367 on May 18, 2007. The bill repeals the Nebraska estate tax effective for deaths on or after January 1, 2007; provides property tax credits, adopts tax brackets and standard deductions for joint filers exactly twice the single-return brackets and standard deduction; repeals the sales tax on construction labor for commercial projects; and creates a new sales tax exemption for wind energy projects.

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FARM INCOME TAX, ESTATE AND BUSINESS PLANNING SEMINARS

by Neil E. Harl

Outrigger Keauhou Beach Resort, Big Island, Hawai'i. January 8-12, 2008

Spend a week in Hawai'i in January 2008! Balmy trade winds, 70-80 degrees, palm trees, white sand beaches and the rest of paradise can be yours; plus a world-class seminar on Farm Income Tax, Estate and Business Planning by Dr. Neil E. Harl. The seminar is scheduled for January 8-12, 2008 at the spectacular ocean-front Outrigger Keauhou Beach Resort on Keauhou Bay, 12 miles south of the Kona International Airport on the Big Island, Hawai'i.

Seminar sessions run from 8:00 a.m. to 12:00 p.m. each day, Tuesday through Saturday, with a continental breakfast and break refreshments included in the registration fee. Each participant will receive a copy of Dr. Harl's 400+ page seminar manual *Farm Income Tax: Annotated Materials* and the 600+ page seminar manual, *Farm Estate and Business Planning: Annotated Materials,* both of which will be updated just prior to the seminar.

Here are a sample of the major topics to be covered:

• Farm income items and deductions; like-kind exchanges.

• Introduction to estate and business planning.

• Co-ownership of property, including discounts, taxation and special problems.

• Federal estate tax, including alternate valuation date, special use valuation, handling life insurance, marital deduction planning, disclaimers, planning to minimize tax over deaths of both spouses, and generation skipping transfer tax.

• Gifts and federal gift tax, including problems with future interests, handling estate freezes, and "hidden" gifts.

• Income tax aspects of property transfer, including income in respect of decedent, installment sales, private annuities, self-canceling installment notes, and part gift/part sale transactions.

• Organizing the farm business—one entity or two, corporations, general and limited partnerships and limited liability companies.

The Agricultural Law Press has made arrangements for **substantial discounts on partial ocean view hotel rooms at the Outrigger Keauhou Beach Resort**, the site of the seminar.

The seminar registration fee is $645 for current subscribers to the *Agricultural Law Digest* or the *Agricultural Law Manual*. The registration fee for nonsubscribers is $695. For more information call Robert Achenbach at 541-302-1958 or e-mail at robert@agrilawpress.com.

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SELECTED ISSUES IN FARM TAXATION

By Roger A. McEowen

June 11-12, 2007 Grand Ely Lodge, Ely, MN

The seminar is designed to provide attendees with a comprehensive and practical understanding of major agricultural income tax issues. In addition, the speaker is open to questions and responses from the attendees. Registrants may attend one or both days, with separate pricing for each combination. Your registration fee includes a comprehensive, annotated manual that will be updated just before the seminar. Break refreshments are included in the registration fee. NOTE: Register early due to space availability. Registration is limited to 70 participants.

The seminars are held on Monday from 1:00 am to 5:00 pm, and Tuesday from 8:00 am to noon. Registrants may attend one or both days. On Monday, Professor McEowen will speak about farm and ranch income tax. On Tuesday, Professor McEowen will cover farm and ranch estate and business planning. Your registration fee includes comprehensive annotated seminar materials for the days attended.

The seminar registration fees are $90 (one day) and $150 (two days). After February 28, 2007, the registration fees are $125 (one day) and $200 (two days). respectively.

These seminars are sponsored by Iowa State University. Full information is available online at www.extension.iastate.edu/agdm/wdlegalandtaxes.HTML. Contact Paula Beckman, Agricultural Law, Iowa State University, 206 Curtiss Hall, Ames, IA 50011-1050 Tel: 515-294-6924 Fax: 515-294-0700 E-mail: pbeckman@iastate.edu